

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, et al.,

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**AMBAC ASSURANCE CORPORATION, ASSURED GUARANTY CORP., ASSURED
GUARANTY MUNICIPAL CORP, NATIONAL PUBLIC FINANCE GUARANTEE
CORPORATION, AND FINANCIAL GUARANTY INSURANCE COMPANY’S
LIMITED OBJECTION TO THE JOINT STIPULATION REGARDING (I) THE DRA
PARTIES’ MOTION AND MEMORANDUM OF LAW IN SUPPORT OF THEIR
MOTION FOR RELIEF FROM THE AUTOMATIC STAY, OR IN THE
ALTERNATIVE, ORDERING PAYMENT OF ADEQUATE PROTECTION [ECF
NO.7643]; AND (II) THE DRA PARTIES’ MOTION AND MEMORANDUM OF LAW IN
SUPPORT OF THEIR NOTICE THAT THE DRA IS A PARTY IN INTEREST AND
CAN PARTICIPATE IN THE MONOLINES AMENDED LIFT STAY LITIGATION
[ECF NO. 11285]**

Ambac Assurance Corporation (“Ambac”), Assured Guaranty Corp. (“AGC”), Assured Guaranty Municipal Corp (together with AGC, “Assured”), National Public Finance Guarantee Corporation (“National”), and Financial Guaranty Insurance Company (“FGIC”, and, together

¹The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19 BK 5233-LTS) (Last Four Digits of Federal Tax ID: 3801).

with Ambac, Assured, and National, the “Monolines”), by and through their undersigned counsel, file this Limited Objection to the entry of an order approving the *Joint Stipulation Regarding (I) The DRA Parties’ Motion and Memorandum of Law in Support of their Motion for Relief from the Automatic Stay, or in the Alternative, Ordering Payment of Adequate Protection [ECF No.7643]; and (II) The DRA Parties’ Motion and Memorandum of Law in Support of their Notice that the DRA is a Party in Interest and can Participate in the Monolines Amended Lift Stay Litigation* (the “Government/DRA Stipulation”) [ECF No. 11285] and state as follows:

BACKGROUND

1. On February 11, 2020, the DRA Parties filed a *Motion and Memorandum of Law in Support of Their (I) Notice that the DRA Is a Party In Interest and Can Participate in the Monolines’ Amended Lift Stay Litigation and Request to Modify the Amended Revenue Bond Scheduling Order, or (II) in the Alternative, Motion to Permit the DRA Parties to Intervene in the Monolines’ Amended Lift Stay Litigation* (the “Intervention Motion”). [ECF No. 10835].

2. Through the Intervention Motion, the DRA Parties generally seek leave to intervene in the Monolines’ HTA-related lift stay litigation. Concurrently with the Intervention Motion, and in accordance with the Court’s Tenth Amended Case Management Order, the DRA Parties filed and Served a Notice of Hearing [ECF No. 10836], noticing the Intervention Motion for hearing at the next scheduled omnibus hearing on March 4, 2020 in Puerto Rico..

3. On February 18, 2020, the Monolines timely filed their opposition to the Intervention Motion (the “Monoline Opposition”). [ECF No. 11126]. The Monoline Opposition summarizes the relevant background facts, which are incorporated herein by reference.

4. Pursuant to the Tenth Amended Case Management Order, the Intervention Motion and the Monoline Opposition are scheduled to be heard at the March 4 omnibus hearing.

5. Notwithstanding the Monoline Opposition, on February 19, 2020, the DRA Parties, the Commonwealth of Puerto Rico (the “Commonwealth”) and the Puerto Rico Highways and Transportation Authority (“HTA”), through their representatives the Financial Oversight and Management Board for Puerto Rico (“FOMB”) pursuant to section 315(b) of PROMESA, and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF” and together with the Commonwealth, HTA, and the FOMB, the “Government Parties”) filed the Government/DRA Stipulation, whereby, the Government Parties and the DRA Parties purport to enter into a joint stipulation regarding the Intervention Motion and the DRA Parties’ participation in the Monolines’ lift stay motion. The Monolines, who have a pending objection to the Intervention Motion, are not a party to the Government/DRA “Joint Stipulation.” The Government/DRA Stipulation attaches a “Proposed Order” at Exhibit A that purports to approve the Government/DRA Stipulation and resolve the Intervention Motion.

ARGUMENT

6. The Government/DRA Stipulation cavalierly seeks the entry of the Proposed Order while ignoring the Monoline Opposition and the Monolines’ rights to appear and be heard on the Intervention Motion. Moreover, despite the timely filed Monoline Opposition, the Proposed Order would grant relief to the DRA Parties without a hearing, thereby improperly defining the scope of participation of the DRA Parties in a lift stay motion filed by the Monolines, pursuant to a stipulation to which the Monolines are not a party. The Monolines object to entry of the Proposed Order.

7. As noted in the Monoline Opposition, permissive intervention is a discretionary prerogative of the court. *See Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 562 (1974) (“Permissive intervenors may be barred . . . if the district judge, in his discretion, concludes that

the intervention will ‘unduly delay or prejudice the adjudication of the rights of the original parties.’”) (Blackmun, J., concurring) (citing Fed. R. Civ. P. 24(b)). And, it is well-settled that the scope of intervention is at the broad discretion of the Court. *See, e.g., In re Fin. Oversight & Mgmt. Bd. for P.R.*, 872 F.3d at 63 (courts have “broad discretion to control and limit the scope of intervention”).

8. The Government/DRA Stipulation seeks to remove the Court’s prerogative and discretion to direct or deny intervention based on the totality of the circumstances. Due process will be served by deciding the Intervention Motion and Monoline Opposition on a complete record at the March 4 omnibus hearing. This is especially true, where here, the Court is already prepared to hear and adjudicate procedural matters related to HTA and other revenue bonds. Due process and prudent consideration dictate that the Court not enter the Proposed Order or approve the Government/DRA Stipulation prior to the hearing scheduled on March 4, 2020.

9. The Monolines do not object to the Government/DRA Stipulation to the extent it seeks solely to memorialize an agreement as between the Government Parties and the DRA Parties. The Monolines object to the extent the Government/DRA Stipulation seeks, through Court *imprimatur* and circumventing due process, to resolve the contested Intervention Motion and define procedures for the DRA Parties’ intervention in the Monolines’ lift stay motion. The Intervention Motion is a pending contested matter, subject to the Monoline Opposition, and should be heard by the Court as scheduled on March 4, 2020.

CONCLUSION

10. Monolines reassert the relief sought in the Monoline Opposition and request the Court to refrain from entry of the Proposed Order, to conduct the hearing on the Intervention Motion as scheduled on March 4, 2020, and upon hearing, to deny the Intervention Motion for the reasons stated in the Monoline Opposition.

Dated: February 20, 2020
San Juan, Puerto Rico

FERRAIUOLI LLC

By: /s/ Roberto Cámara-Fuertes
Roberto Cámara-Fuertes (USDC-PR No. 219002)
Sonia Colón (USDC-PR No. 213809)
221 Ponce de León Avenue, 5th Floor
San Juan, PR 00917
Telephone: (787) 766-7000
Facsimile: (787) 766-7001
Email: rcamara@ferraiuoli.com
scolon@ferraiuoli.com

MILBANK LLP

By: /s/ Atara Miller
Dennis F. Dunne (admitted *pro hac vice*)
Atara Miller (admitted *pro hac vice*)
Grant R. Mainland (admitted *pro hac vice*)
John J. Hughes, III (admitted *pro hac vice*)
55 Hudson Yards
New York, NY 10001
Telephone: (212) 530-5000
Facsimile: (212) 530-5219
Email: ddunne@milbank.com
amiller@milbank.com
gmainland@milbank.com
jhughes2@milbank.com

Attorneys for Ambac Assurance Corporation

ARENT FOX LLP

By: /s/ David L. Dubrow
David L. Dubrow (admitted *pro hac vice*)
Mark A. Angelov (admitted *pro hac vice*)
1301 Avenue of the Americas
New York, NY 10019
Telephone: (212) 484-3900
Facsimile: (212) 484-3990
Email: david.dubrow@arentfox.com
mark.angelov@arentfox.com
Randall A. Brater (admitted *pro hac vice*)
1717 K Street, NW
Washington, DC 20006
Telephone: (202) 857-6000
Facsimile: (202) 857-6395
Email: randall.brater@arentfox.com

Attorneys for Ambac Assurance Corporation

REXACH & PICÓ, CSP

By: /s/ María E. Picó

María E. Picó
(USDC-PR No. 123214)
802 Ave. Fernández Juncos
San Juan, PR 00907-4315
Telephone: (787) 723-8520
Facsimile: (787) 724-7844
Email: mpico@rexachpico.com

***Attorneys for Financial Guaranty Insurance
Company***

BUTLER SNOW LLP

By: /s/ Martin A. Sosland

Martin A. Sosland (admitted *pro hac vice*)
5430 LBJ Freeway, Suite 1200
Dallas, TX 75240
Telephone: (469) 680-5502
Facsimile: (469) 680-5501
Email: martin.sosland@butlersnow.com
Jason W. Callen (admitted *pro hac vice*)
150 3rd Ave., S., Suite 1600
Nashville, TN 37201
Telephone: (615) 651-6774
Facsimile: (615) 651-6701
Email: jason.callen@butlersnow.com

***Attorneys for Financial Guaranty Insurance
Company***

CASELLAS ALCOVER & BURGOS P.S.C.

By: /s/ Heriberto Burgos Pérez

Heriberto Burgos Pérez
(USDC-PR No. 204809)
Ricardo F. Casellas-Sánchez
(USDC-PR No. 203114)
Diana Pérez-Seda
(USDC-PR No. 232014)
P.O. Box 364924
San Juan, PR 00936-4924
Telephone: (787) 756-1400
Facsimile: (787) 756-1401
Email: hburgos@cabprlaw.com
rcasellas@cabprlaw.com
dperez@cabprlaw.com

***Attorneys for Assured Guaranty Corp. and
Assured Guaranty Municipal Corp.***

CADWALADER, WICKERSHAM & TAFT LLP

By: /s/ Howard R. Hawkins, Jr.

Howard R. Hawkins, Jr. (admitted *pro hac vice*)
Mark C. Ellenberg (admitted *pro hac vice*)
William J. Natbony (admitted *pro hac vice*)
Ellen M. Halstead (admitted *pro hac vice*)
Thomas J. Curtin (admitted *pro hac vice*)
Casey J. Servais (admitted *pro hac vice*)
200 Liberty Street
New York, NY 10281
Telephone: (212) 504-6000
Facsimile: (212) 504-6666
Email: howard.hawkins@cwt.com
mark.ellenberg@cwt.com
bill.natbony@cwt.com
ellen.halstead@cwt.com
thomas.curtin@cwt.com
casey.servais@cwt.com

***Attorneys for Assured Guaranty Corp. and
Assured Guaranty Municipal Corp.***

**ADSUAR MUNIZ GOYCO SEDA & PEREZ-
OCHOA PSC**

By: /s/ Eric Perez-Ochoa

Eric Pérez-Ochoa
USDC-PR No. 206,314
Email: epo@amgprlaw.com

By: /s/ Luis A. Oliver-Fraticelli

Luis A. Oliver-Fraticelli
USDC-PR No. 209,204
Email: loliver@amgprlaw.com
208 Ponce de Leon Ave., Suite 1600
San Juan, PR 00936
Telephone: (787) 756-9000
Fax: (787) 756-9010

***Attorneys for National Public Finance
Guarantee Corp.***

WEIL, GOTSHAL & MANGES LLP

By: /s/ Robert Berezin

Jonathan Polkes (admitted *pro hac vice*)
Gregory Silbert (admitted *pro hac vice*)
Robert Berezin (admitted *pro hac vice*)
Kelly Diblasi (admitted *pro hac vice*)
Gabriel A. Morgan
767 Fifth Avenue
New York, NY 10153
Telephone: (212) 310-8000
Fax: (212) 310-8007
Email: jonathan.polkes@weil.com
gregory.silbert@weil.com
robert.berezin@weil.com
kelly.diblasia@weil.com
gabriel.morgan@weil.com

***Attorneys for National Public Finance
Guarantee Corp.***

CERTIFICATE OF SERVICE

I hereby certify that, on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all CM/ECF participants in this case.

/s/ Marty A. Sosland